

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF VERMONT

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BURLINGTON DRUG COMPANY,

Plaintiff

v.

RxBAZAAR, INC.,

Defendant.

Docket No. 2:04-cv-316

COMPLAINT

The Plaintiff, Burlington Drug Company ("BDC"), by counsel, for its complaint alleges as follows:

1. This is a civil action for monetary relief brought by BDC against RxBazaar, Inc. ("Bazaar") for monetary relief based upon breach of contract, fraud, and negligent misrepresentation

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because the Defendant Bazaar transacts business in this District and because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

3. Plaintiff BDC is a corporation organized and existing under the laws of the State of Vermont, with its principal place of business in Milton, Vermont. At all relevant times BDC was a pharmaceutical wholesaler engaged in the wholesale distribution of pharmaceuticals to hospitals and retail drug stores located in Vermont, New York, Maine, Massachusetts, and New Hampshire.

4. The Defendant Bazaar is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Cincinnati, Ohio. Bazaar is a pharmaceutical wholesaler that, among other things, wholesales and distributes pharmaceuticals

to other pharmaceutical wholesalers such as BDC.

5. The amount in controversy exceeds \$75,000.

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 (a) as there is complete diversity of citizenship and the amount in controversy exceeds \$75,000.

COUNT I

7. On or about February 4, 2004, Bazaar offered for sale 60-pill units of 20 milligram dose Zyprexa, a pharmaceutical used to treat mental illness, for \$955.99 per 60-pill unit.

8. On or about February 4, 2004, in response to an order placed by BDC, Bazaar shipped 243 60-pill units of what it represented to be 20 milligram Zyprexa.

9. Bazaar invoiced BDC \$232,305.57 for the Zyprexa, payable in 15 days, and BDC paid Bazaar the \$232,305.57 on or before February 19, 2004.

10. BDC thereafter sold much of the Zyprexa that it had purchased from Bazaar to its retail drugstore customers and, in reliance upon Bazaar's representations to BDC that the dosage was 20 milligrams, BDC represented to its customers that the product it was selling to them was 20 milligram doses of Zyprexa.

11. Thereafter, BDC was notified by the United States Food and Drug Administration ("FDA") that the Zyprexa it had purchased from Bazaar was misbranded and adulterated and possibly counterfeit. The FDA urged BDC to recall from its retail drug store customers the Zyprexa that BDC had purchased from Bazaar and resold to those customers.

12. The Zyprexa sold by Bazaar to BDC was not, as Bazaar had represented, 20 milligram doses but, in fact, was 10 milligram doses that had been mislabeled.

13. BDC complied with the FDA's request and recalled from its customers the Zyprexa it had purchased from Bazaar.

14. As a result of the erroneous representation BDC made to its customers regarding the Zyprexa, and the resulting recall, BDC's reputation with its business customers was damaged

and BDC incurred significant expenses in recalling the Zyprexa.

15. The FDA eventually seized and or quarantined all of the Zyprexa that BDC had purchased from Bazaar.

16. Bazaar refused and continues to refuse to honor BDC's request that Bazaar return the \$232,305.57 that it paid Bazaar for the Zyprexa.

17. Eli Lilly Company, the manufacturer of Zyprexa, cancelled BDC's license to purchase and distribute pharmaceuticals manufactured by Eli Lilly Company as a result of BDC's distribution and sale of the mislabeled Zyprexa.

18. As a direct cause of Bazaar misrepresenting and selling the mislabeled Zyprexa to BDC, and the resulting cancellation of Eli Lilly Company's license to BDC, BDC is not and will not be able to purchase pharmaceuticals from Eli Lilly for resale to its customers.

19. Hospitals will not maintain supply relationships with pharmaceutical wholesalers, such as BDC, who cannot supply a full line of hospital pharmaceutical products.

20. As a direct cause of Bazaar misrepresenting and selling the mislabeled Zyprexa to BDC, and the resulting cancellation of Eli Lilly Company's license to BDC, BDC has been and will continue to be unable to sell pharmaceuticals, regardless of the manufacturer, to hospitals.

21. As a direct cause of Bazaar's misrepresenting and selling the mislabeled Zyprexa, BDC lost the \$232,305.57 purchase price it paid to Bazaar.

22. Bazaar breached its contract to sell BDC 20 milligram doses of Zyprexa by promising to do so, accepting payment from BDC for the purchase, and then by failing to sell and deliver to BDC the promised 20 milligram doses of Zyprexa.

23. As a direct cause of Bazaar's breach of its contract with BDC, BDC has incurred and will continue to incur substantial monetary losses and damage to its business reputation.

COUNT II (FRAUD)

24. Plaintiff BDC incorporates the allegations set forth in paragraphs 1 through 23 of this Complaint as if fully set forth herein.

25. Bazaar falsely and fraudulently represented to BDC that the pharmaceuticals that it was selling to BDC was 20 milligram doses of Zyprexa when in fact the pharmaceuticals it sold to BDC were not 20 milligram doses of Zyprexa and were, to the contrary, mislabeled.

26. The representation made by Bazaar and described in paragraph 25 of this complaint was a material and false representation.

27. BDC relied upon Bazaar's false and material representation in paying Bazaar \$232, 305.57 to purchase the mislabeled Zyprexa and in subsequently reselling and distributing that product to BDC's customers.

28. Bazaar knowingly and intentionally made the false and material representation to BDC described in paragraph 25 above.

29. As a result of its reliance on Bazaar's knowingly and intentionally made false representation, BDC incurred and continues to incur substantial injury including, but not limited to, monetary losses and damage to its business reputation.

COUNT III (NEGLIGENT MISREPRESENTATION)

30. BDC incorporates and realleges the allegations set forth in paragraphs 1 through 29 of this complaint as if fully set forth herein.

31. Bazaar's false representation to BDC that the pharmaceuticals it delivered and sold to BDC were 20 milligram doses of Zyprexa was made negligently and with a lack of due care.

32. Bazaar owed a duty to exercise reasonable care in making representations to BDC regarding the nature of the product it was selling to BDC and Bazaar breached that duty.

33. As a direct and proximate result of Bazaar's negligent misrepresentation and breach of its duty of care, BDC incurred and continues to incur substantial injury including, but not limited to, monetary losses and damage to its business reputation.

PRAYER FOR RELIEF

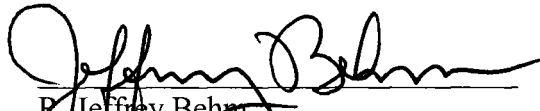
WHEREFORE, Plaintiff demands as follows:

- (a) Award judgment in Plaintiffs' favor and against Defendant on each count of the Complaint;
- (b) On All Counts: Award Plaintiff compensatory damages, both direct and consequential, in an amount in excess of \$1 million.
- (c) On Count II: Award Plaintiff punitive damages.
- (d) Award Plaintiff prejudgment interest, attorneys' fees and costs of court; and
- (e) Grant such other relief as this court deems just and appropriate.

JURY DEMAND

BDC requests a trial by jury on all counts of this complaint.

BURLINGTON DRUG COMPANY


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